IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 863 of 2006.

Mr.Satishkumar B. Chaudhury
and another. ... Petitioners.

V/s.

Mr.Ravindra Ramesh Mankame. ... Respondent.

A.K.Jalisatgai for the petitioners..

CORAM : V.C.DAGA, J.

DATED : 21st April 2006.

P.C. :

Leave to amend.

Heard learned counsel for the petitioner.

2. This petition is directed against the order dated 17th September, 2005 passed by the Industrial Court, Thane dismissing the Revision (ULP) No.8 of 2005 confirming the order passed by the Second Labour Court, Thane in Complaint (ULP) No.113 of 1999 directing reinstatement of the complainant with continuity of service and full back wages with effect from 18th December, 1996.

The Factual Matrix :

3. The factual matrix reveals that a complaint was filed under Item 1 (a),(b),(c),(d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short) against (i) M/s.S.K.Textiles; (ii) Shri Bindaprasad Bhondu Chaudhury and (iii) Shri Satishkumar Bindaprasad Chaudhury by the complainant Shri Ravindra Ramesh Mankame (respondent herein).

On being noticed, a composite written statement was filed by all the three respondents therein. It was signed by respondent Nos.2 and 3 (petitioners herein) for and on behalf of all. A categorical admission was given in the written statement that the firm by name M/s.S.K.Textiles is in existence. That the Complainant had no concern with the same, as such, it is was sought to be asserted that the complainant/ respondent herein did not have any relationship with M/s.S.K.Textiles. The Court below did not accept this above conention of the petitionrs and passed the impugned order, which is a subject matter ofl challenge in this petition filed under Articles 226 and 227 of the Constitution of India.

Consideration :

Having heard learned counsel for the petitioners, the defence of the petitioners that the firm is in existence but the complainant has no concern with the said firm should not have been taken in the common written statement, if the complainant/ respondent wa in no way related with M/s.S.K.Textiles. Had there been no relationship of the complainant/ respondent with M/s.S.K.Textiles, it was not necessry for the business of the petitioners to say that respondent was the personal driver of petitioner No.1 and not of M/s.S.K.Textiles. The nature of the common defence taken clearly goes to show that the petitioners were very much related with M/s.S.K.Textiles.

4. In the above view of the matter, it was expected on the part of the petitioner either to file petition along with M/s.S.K.Textiles or to join M/s.S.K.Textiles as party respondent in the petition so that entire body of the litigants with whom there was a lis could have been before this Court.

5. The impugned order, if perused, would to to show that all the three respondents were jointly directed to reinstate the complainant with full back wages. In this view of the matter, it would be clear that by excluding M/s.S.K.Textiles from the array of parties, the impugned order is allowed to become final and conclusive against M/s.S.K.Textiles. If this petition is entertained and allowed, then, it is bound to give rise to two inconsistent orders, which is not permissible in law as laid down by the Division Bench of this Court in the case of ***Sheela Wd/o. Vijay v. Central Bank***, 1998 (I) Mh.L.J. 928.

6. In the above view of the matter, petition is liable to be dismissed for non-joinder of necessary party.

7. So far as merits of the matter are concerned, the contention of the petitioner that the complainant- driver has no concern with the industrial unit of the petitioner can hardly be accepted on the face of the evidence available on record. No attempt is made by the petitioner to produce account books of the establishment to show that no payments were made to the complainant-driver from the business establishment M/s.S.K.Textiles. In the circumstances, impugned

order deserves to be sustained holding that the petitioners have engaged in unfair labour practices under Item No.1(a) and (b) of Schedule IV of the MRTU & PULP Act.

8. In totality of the facts and circumstances of the case, the view taken by the Courts below is a reasonable and possible view. No perversity is demonstrated by the petitioners. Petition is, thus, dismissed in limine with no order as to costs.

(V.C.DAGA, J.)